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Wake-up call for the Lowlands: Dutch counterterrorism from a comparative perspective

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Abstract *The Netherlands is one of the few countries in Western Europe that did not experience massive terrorist attacks and where counterterrorism actions did not feature prominently on the political agenda. Until quite recently, the Netherlands had neither emergency legislation for terrorist incidents nor a specific Act that criminalized terrorist offences. In response to the European Union framework legislation, a bill was produced that penalizes participation in a terrorist organization, flanked by a vast array of other measures. This article analyses the policy, institutional and legislative responses to terrorism in the Netherlands and compares these with responses from other European states. The events of 9/11, as well as the political and public anxiety over the murders of Pim Fortuyn and Theo van Gogh, acted as a firm wake-up call for the Netherlands insofar as the threat of terrorism is concerned. Whilst most countries adopted an incremental approach to countering terrorism, the Netherlands witnessed a radical shift in criminal justice and law enforcement policy following these events.*

Introduction

The events of 9/11 were a firm wake-up call for the Netherlands. It was rapidly succeeded by an announcement by the then Minister of Justice that a new anti-terrorist law would be enacted. The new law, which flows from the European Union *Framework decision on combating terrorism*,² entered into force on 10 August 2004, effectively criminalizing terrorism (including its preparation and conspiracy to carry out terrorist acts) as a separate criminal offence. Moreover, to enhance counterterrorism efforts, numerous proposals were submitted to facilitate the demand for data from the financial sector, to introduce compulsory identification, and to facilitate proactive investigation methods.

The leading assumption in this article is that the attacks of September 11, 2001 provided Dutch authorities with a policy opportunity to introduce a series of measures against terrorism and crime in general. Against the background of a rapidly changing political climate, in which Pim Fortuyn hailed victory with his anti-immigration programme, and in which the centre-right government sought

¹ I would like to thank the three anonymous reviewers, as well as the editors, for their helpful and constructive comments on earlier versions of this article. The responsibility for this article rests, however, solely with the author.

² Official Journal of the European Communities, L 164/3, 22 June 2002, 3–7.

to reassert authority in a society that seemed to have lost its compass, a sense of insecurity dominated popular and political discourse alike. The government's ambitious counterterrorism programme subsequently unveiled itself as a Trojan horse that strengthened its hands over powers of legislation and law enforcement.

The analysis in this article draws a distinction between three types of strategies, each having a transformative effect on policy-making, institution- and agency-building and legislation. The first refers to a series of policy shifts: measures aimed at the prevention, investigation or repression of terrorism. The second refers to institutional shifts: organizational innovations or adaptations in the number and composition of relevant actors, and interaction between old and new actors. The third refers to legislative shifts: legal changes that were proposed and introduced to respond to the challenge of terrorism, crime and public order nuisance in general. As the Dutch response appears to be a radical departure from its past—capable of characterization as a response to earlier terrorist experiences without the introduction of a vast political counterterrorist agenda—a comparison with the steps taken in some EU member states (France, Germany, Italy, Spain and the United Kingdom) may shed light on its overall aims and scope. Despite the converging influence of EU-wide counterterrorism instruments on the domestic agendas of EU member states, the Dutch have steered an independent, sovereign course.

Assessing the terrorist threat in the Netherlands

Following the attacks in the United States of 11 September 2001 and the Madrid railway bombings of 11 March 2004, the Netherlands experienced a shock of its own:³ the assassination of Dutch film producer Theo van Gogh on 2 November 2004 (Rosenthal et al 2005). Mohammed Bouyeri, a Moroccan-Dutchman, shot van Gogh in the stomach. After van Gogh staggered to the other side of the street, Bouyeri shot him several more times and slashed his throat with a curved machete. Bouyeri then pulled a smaller knife from his bag that he used to pin a letter to the body of van Gogh. The letter was addressed to Ayaan Hirsi Ali who, together with van Gogh, produced the movie, 'Submission', criticizing the abuse of women under Islam (Buruma 2006, 2). The question of whether the intelligence services could have prevented this ritualistic murder is still a subject of debate in the Dutch parliament, despite a letter from the Minister of the Interior on 18 December 2006⁴ making the case that though there was intelligence information on the perpetrator, the information was incomplete, and the focus of the intelligence services had mainly been on the (prevention of) large-scale, internationally orchestrated attacks.

Intelligence sources claim that the Netherlands should still be regarded as a potential target for terrorist attacks. Activities may vary in scale, from creation of

³The Dutch government emphasized that measures cannot guarantee that the Netherlands will be exempt from terrorist attacks. It read the railway bombings in Madrid as an attack against western society: 'The Netherlands is such a society', it stated. See Minutes of Parliament, Tweede Kamer (TK) 2003–2004, 27 925, no 123.

⁴'Brief van de Minister van Binnenlandse Zaken en Koninkrijksrelaties [Letter from the Minister of the Interior and Kingdom Relations]', 18 December 2006, TK 2006–2007, 29 854, number 18.

a parallel normative order to infiltration of community-based institutions with the ultimate aim of obstructing the proper functioning of civil society. From the Dutch perspective at least, the threat of terrorism in the Netherlands and other European countries is regarded as unremittingly substantial.⁵ This assessment of the terrorist threat, after the Madrid bombings, is based on the former presence of Dutch troops in Iraq, the current mission in Afghanistan, the close relationship between the Netherlands and the US, and presence of Muslim groups in Dutch society who may be susceptible to radicalization.⁶ According to the General Intelligence and Security Service (Algemene Inlichtingen en Veiligheidsdienst, AIVD)⁷, various threats may emanate from radical Islam, one of which is terrorism:

In addition to radical Islamic organizations and networks which concentrate on the Jihad (in the sense of armed combat) against the West, there are other groups, which principally focus on 'Dawa' (the propagation of the radical-Islamic ideology), while some groups and networks combine both. (Ministry of the Interior and Kingdom Relations, 2004, 7)

The term 'jihad' is defined as the Islamic war, the deployment of violent activities against perceived enemies of Islam in order to achieve a world that is a pure reflection of the objectives originally stated in the first sources of Islamic belief—the Koran and the Sunna (Ministry of the Interior and Kingdom Relations 2002, 7).

Such threat assessment has shifted from external to internal, from international to domestic or 'home-grown', and from hierarchically structured to networked and fluid in character (Muller et al 2003, 31). Previous Dutch experiences with terrorism were of a totally different nature. In the 1970s, the Netherlands was faced with large-scale hostage situations (Muller 2003, 148, 155). Compared with other European states, the Netherlands suffers relatively low (but significantly higher than, for instance, Finland and Luxembourg) levels of terrorist incidents (Bakker 2006a, 50; Van de Linde et al 2002, 4).

The official Dutch perspective is that in Western Europe, several international networks of jihadi fighters became active after receiving training in Afghanistan, Bosnia, Chechnya, Pakistan and Iraq. Legal investigations have concentrated on individuals who take part in local and virtual networks. These networks have allegedly been inspired by radical Islam. They have adopted Al Qaeda ideology and seek to express this through mission and terrorism. Several mixed groups are also active whereby individuals of local networks have international, commanding contacts. Prisons, the Internet and prayer houses are regarded as 'hot-spots' for radicalization (Van Hulst 2005, 5). Recruitment (for the jihad) is defined as spotting (looking for and detecting potential recruits) and then monitoring and

⁵Threat assessment of the National Anti-Terrorism Co-ordinator, <<http://www.nctb.nl>>.

⁶Government letter addressed to parliament on the occasion of the installation of a national anti-terrorism coordinator, 10 September 2004, 5306302/504.

⁷Formerly the Netherlands National Security Service (Binnenlandse Veiligheidsdienst, BVD), amended and changed by law. The Act of 7 February 2002, namely the Intelligence and Security Services Act 2002 (Wet op de Inlichtingen en Veiligheidsdiensten 2002, WIV), providing for rules relating to the intelligence and security services and amendment of several Acts, gives the General Intelligence and Security Service powers to investigate.

manipulating people to achieve an internalized radical political-Islamic (or Islamic) conviction, with the final purpose of having these people participate in the jihad (Ministry of the Interior and Kingdom Relations 2002, 7). The General Intelligence and Security Service identifies three risk groups, (mostly) men between 18 and 32 years old, converts (as in the case of 'shoe bomber', Richard Reid), and first-, second- or third-generation immigrant youths (who sympathize, for example, with the Islamic war against Israel):

the two young men of Moroccan descent ... who were killed in January 2002 at the Kashmir border, are a clear example of people recruited in the Netherlands for the jihad and who travelled abroad to undergo military and ideological training and (or) participate in the Islamic war. It seems probable, as a careful estimate, that a few dozens of people are currently involved in a recruitment process in the Netherlands. (Ministry of the Interior and Kingdom Relations 2002, 9)

Central in the Dutch threat assessment is an image of terrorism as a multitude of larger and smaller terrorist groups, cells and persons, who have become active in the preparation and commitment of terrorist offences, inspired by the 9/11 attacks. Cases of individual radicalization (*zelfontbranding*) complement this picture, whereby persons act in isolation from terrorist networks, mostly by virtual means. Current terrorist groups are regarded as groups without a concrete objective. The nature and location of their targets is as such hard to predict:

in studying the various strategic orientations within radical Islam, we may not ignore the fact that various forms of radical Islam cannot be understood on the basis of a clearly identifiable end-means rationality (ie, a coherent strategy). The activities displayed are not really based on clear views regarding ends and means, but the motives can rather be associated with (extreme) ideas about the perceived enemy, and about how to fight this enemy. (Ministry of the Interior and Kingdom Relations 2004, 5)

Social affiliation, through friendship or kinship, is seen as one of the pivotal elements in the establishment of jihadi terrorist networks (Bakker 2006b, 56). Some of the earlier legal investigations against violent jihadi terrorism resulted in the release of individuals suspected of preparing terrorist acts before or during the court proceedings, primarily because of lack of evidence. It was argued that secret service intelligence could not be used in evidence, or that early interventions by police and prosecution failed to produce substantial evidence that a terrorist act was being prepared. Moreover, the General Intelligence and Security Service has been cautious in revealing its sources while investigations were still taking place. As we will see below, recent legal changes have resulted in a number of convictions.

Policy response

Shortly after 9/11, the then Dutch government announced a comprehensive action plan against terrorism, entitled Action Plan Counter-Terrorism and Security (Actieplan Terrorismebestrijding en Veiligheid).⁸ It contained a sizeable range of measures for the intensification of the fight against terrorism, which, according to

⁸ < http://www.nctb.nl/Images/actieplan%20terrorismebestrijding%20en%20veiligheid_tcm111-85220.pdf > .

the government, introduced new priorities. According to initial estimates, €70–90 million were needed to achieve the various objectives, including the prevention of terrorism.

Preventive measures against terrorism were meant to improve how the police and intelligence services were placed in terms of information. Moreover, more effort was to be invested in the protection of vulnerable subjects and objects. The intelligence and security services were granted more financial means in order to realize these objectives. On the technological side, a budgetary line was developed on biometrics, that is, the identification of physical characteristics. According to the Action Plan, biometrics was seen as a tool in tracking down terrorist suspects and in identifying patterns and networks. As it was presumed that 'terrorist organizations make intensive use of modern technology', the government sought to extend its interception capacity by rapidly introducing the Action Plan Digital Detection and modernizing police interception ('tap') rooms. Moreover, within the European context, the Netherlands sought an 'improvement' of its visa policy and central disclosure of information on the issuance of visas.

The staff of the Royal Military Constabulary (Koninklijke Marechaussee, KMAR), who are responsible for immigration control at the border, was expanded in order to intensify border controls and to employ 'Mobile Aliens Control'—an institutionalized procedure that replaces border control units with mobile patrol units that drive around motorways 'spotting' vehicles suspected of bearing illegal immigrants. Measures to secure civilian flight traffic were also extended, the KMAR reinforcing its monitoring role in this capacity. At the border, the objective was the checking of all bags and improved security of the cockpit. Moreover, the government announced measures for the protection of the infrastructure of government administration and private companies (including information and communication technologies). In order to improve the possibility to intervene prior to the actual occurrence of terrorist attacks, the government also proposed to enhance the capacity of relevant agencies (see the section on 'Institutional response' below) in order to prevent, curb or reverse processes of radicalization and recruitment. In line with the deconcentrated governmental structure, municipal authorities were asked to improve local contacts with different communities.

The government Action Plan acknowledged and endorsed the need for an international approach. The Netherlands is a partner in several international initiatives, including the implementation of recommendations of the Financial Action Task Force (FATF) against money-laundering, the duty of states to criminalize the disposal of financial means for the purpose of terrorist activities, and the endorsement of the European Council resolution to freeze goods of terrorist organizations in the event of 'a serious suspicion'. For the fight against terrorism, it was seen as important to focus on the link between terrorism and financial flows, as the government sought to halt the financial support for terrorist organizations. Measures included legislation (see below) and the improvement of forensic accountancy.

In the wake of the Madrid railway bombings of March 2004, the government reported progress on an additional measure in the fight against terrorism.⁹ The

⁹'Beleidsplan Crisisbeheersing 2004–2007 [Policy plan crisis management 2004–2007]', TK 2003–2004, 29 668, number 1.

new alert system (*alerteringssysteem*) would inform government agencies, companies and (indirectly) citizens about increased chances of terrorist attacks by using a set of codes. Certain codes are provided with extra preventive measures. Moreover, 'soft targets' were to be mapped and spotted, because the attacks in Madrid illustrated that terrorists were not merely interested in vital targets, but also in large-scale attacks on arbitrary subjects and soft spots. The alert system is not a public system, but a system in which administrative authorities, companies and sectors are prompted to take measures, for example, to announce that people are to refrain from travelling to and from Schiphol Airport in the event of imminent danger. The alert system allows the application of different levels of alert for different sectors (drinking water, railways, Schiphol Airport and Rotterdam harbour). The technical and operational introduction of the system was completed on 16 June 2005. The government announced the appointment of permanent safety zones, such as Schiphol airport and (in the near future) all other international airports in the Netherlands. Within these permanent safety zones, it is possible to perform preventive searches.¹⁰

In line with the preventive engagement orientation, the Netherlands has sought to perform foreign policy aimed at the de-escalation and management of conflicts abroad. This implies support to source countries in the recognition and identification of threats, with a view to reinforcing their capacity to prevent attacks. At the same time, it is acknowledged that the terrorists are also recruited in European countries. Preventive policies with regard to failed states are an element of foreign policy, and results can only be expected in the long run. Countries willing to acknowledge that terrorists may be plotting attacks on their territory, will be offered (technical) support by the Dutch authorities, for instance, in the interception of international communications.

Institutional response

The government Action Plan against Terrorism included a series of measures that focused on arranging additional capacity for the investigation and prosecution of terrorist offences and on acquiring qualified professionals for the analysis and detection of those offences. The government also sought support for the investigation of the special assistance capacity.¹¹ Some 20 different organizations in the Netherlands are involved in counterterrorism, either strategically or operationally. The AIVD lost its monopoly on counterterrorism and witnessed the emergence of new agencies on the scene. New partnerships had to be created, all requiring specific intelligence and information.

An inquest into the murder of Pim Fortuyn (2002) was led by the Committee Havermans. This resulted in a recommendation to expand the AIVD and to innovate Information and Communication Technology. The expansion measure was financed out of a reservation of €500 million for counterterrorism and anti-radicalization purposes. The tasks, powers and competencies of the AIVD remained unaffected. The Committee further recommended improving cooperation of the AIVD with the police, Prosecution Service and local

¹⁰ < <http://www.nctb.nl> > .

¹¹ Special Assistance Forces (Bijzondere Bijstands Eenheden, BBE).

government. In its anti-terrorism Action Plan, the government budgeted €400 million for counterterrorism and anti-radicalization measures for a period of five years. This culminated in a staff expansion in the AIVD (107 and 200 following the Havermans report); 90 extra staff for police and Public Prosecution Service; 148 extra staff for the Royal Military Constabulary; 235 extra staff for the Royal and Diplomatic Security Service (Dienst Koninklijke en Diplomatieke Beveiliging, DKDB); and seven extra staff for the Protection and Security Service (Eenheid Bewaken en Beveiligen, EBB).

A first innovation concerned the establishment of a National Anti-Terrorism Co-ordinator (Nationaal Coördinator Terrorismebestrijding, NCTb)¹² in 2004. The objective was to bolster counterterrorism capacity, also with a view to complement the capacity of the AIVD. The anti-terrorism coordinator leads an agency that 'translates' operational information and analyses into policy proposals and implementation trajectories. The NCTb has five concrete missions and a staff of just over 80 people¹³. First, it prepares policy-making at national and international level for both 'security' ministers (the Minister of Justice and the Minister of the Interior). Second, it is an analysis unit, as it prepares general threat assessments from information drawn from the AIVD, the military intelligence service (MIVD) and the regional police forces. Third, it prepares large projects, including the introduction of the national alert system and coordination projects. The fourth task of the NCTb is personal protection. The fifth is civil-aviation protection,¹⁴ which includes access control and identity and luggage checks. Also central to the activities of the NCTb is cooperation with the private sector. With the creation of the NCTb, the government has sought to elevate the importance of counterterrorism. It was argued that terrorism could not be solved simply by pooling professionals from different organizations.¹⁵

Crucial in the new approach is the preparation of one joint strategic conceptual policy framework, which has been tuned internationally and which determines priorities in policies and activities. The NCTb ought to act as the spider in the web, capable of organizing cooperation, management and decisive authority (*doorzettingsmacht*)¹⁶ at a higher level. Moreover, it should combine, analyse and use information that has been collected by third parties. The NCTb is accountable to the Ministers of Justice and the Interior, and forms part of the budget of the

¹² Government letter addressed to parliament on the installation of a national anti-terrorism coordinator, 10 September 2004, TK 5306302/504; 'Regeling van de Ministers van Justitie en Binnenlandse Zaken en Koninkrijksrelaties van 29 juni 2005, nr DDS5357209, houdende instelling van de Nationaal Coördinator Terrorismebestrijding [Decision of the Ministers of Justice and the Interior and Kingdom Relations of 29 June 2005, no DDS5357209, with regard to the establishment of the National Coordinator for the Fight Against Terrorism]', <http://www.nctb.nl/Images/Instellingsregeling_tcm111-85322.pdf>.

¹³ Interview with Tjibbe Joustra, national anti-terrorism coordinator, *Fact*, 1, 10, Deloitte, 4–9.

¹⁴ To this end, the Civil Aviation Inspector (Inspectie Beveiliging Burgerluchtvaart, IBBLV) was placed under the authority of the NCTb. The National Coordinator for Guarding and Protection (Nationaal Coördinator Bewaking en Beveiliging, NCBB/EBB) was also brought under the NCTb.

¹⁵ Government letter addressed to parliament on the installation of a national anti-terrorism coordinator, 10 September 2004, TK 5306302/504.

¹⁶ The Council of Ministers approved this measure on 24 June 2005.

Ministry of Justice. The difference is that the threat assessments and analyses do not focus on the level of individual suspects. The fact that the NCTb is primarily answerable to the Minister of Justice and the AIVD primarily to the Minister of the Interior is regarded as a significant obstacle in the communication between the two agencies, and has formed one of the core arguments for the possible creation of a joint Ministry of Safety (Brinkman 2006).

With a view to improving mutual communication and information exchange, two coordination platforms were established: the Gezamenlijk Comité Terrorismebestrijding (GCT) and the Coördinerend Overleg Terrorismebestrijding (COTb). The first platform is meant to coordinate counterterrorism policy and strategy; the COTb is focused on operational coordination. In order to improve the intelligence exchange between the various agencies and police forces, the Counter Terrorism Information Box was created (Contra Terrorisme Informatiebox, CT-Infobox). The AIVD has led this initiative, which compares information stemming from police, justice, MIVD and Naturalization and Immigration service (Immigratie- en Naturalisatiedienst, IND). The CT-Infobox is a nodal information and analysis unit. The information collected may form the basis for further operational action, which may consist of law enforcement intervention, immigration intervention, intelligence surveillance, distortion or a combination of these methods. The effectiveness of the CT-Infobox remains an issue for debate and has been doubted by insiders.

A Council for National Security (Raad voor de Nationale Veiligheid, RNV)¹⁷ was created as a subcouncil of the Council of Ministers. The RNV, which meets on a monthly basis, is chaired by the Prime Minister. The Minister of Justice is the coordinating minister for counterterrorism. The Ministers of Interior and Kingdom Relations, Defence, and Aliens Affairs and Integration have also been members of this council. The other ministries are expected to act on the basis of cooperation. The central commanding authority (*doorzettingsmacht*) was added to the portfolio of the Minister of Justice after a formal endorsement by the Council of Ministers on 24 June 2005. It reflects the demand for effectiveness and immediate response in a country with several political and administrative layers. A concrete threat posed by a terrorist attack would be a punishable crime, which explains the responsibility of the Minister of Justice through the Public Prosecution Service.¹⁸ When it is necessary to increase the scale of activities to the national level, the Minister of Justice is advised by a policy team, composed of the head of the NCTb (chairman), the Chairman of the Board of Prosecutors General, and the Chief Constable of the national police service (Korps Landelijke Politie Diensten, KLPD). The aim is to accelerate the response time and to minimize practical and logistical obstacles.

The operational arena has also been subject to a few changes. A week after the murder of Theo van Gogh in November 2004, two suspects were arrested in the Hague. An explosive device went off prior to the arrest, and one of the suspects was hit in the shoulder by a police bullet. This incident illustrated the need to revise the BBEs (special assistance forces). A special inquiry into the functioning of

¹⁷ It replaces the former Council for Intelligence and Security Services (Raad voor de Inlichtingen en Veiligheidsdiensten).

¹⁸ Government letter addressed to parliament on the installation of a national anti-terrorism coordinator, 10 September 2004, 5306302/504.

the BBEs had already been requested by the government. The report, which went to the government but was not released in the public domain (Fijnaut 2004), recommended the restructuring of all special services, including the special arrest and support units of the police and the Royal Military Constabulary. The structure was diagnosed as insufficiently coherent, with units lacking organizational, operational and staff cohesion, which made it difficult to operate effectively in an integrated manner, either preventatively or repressively. When judged against the proportionality of terrorist violence, an imperfect balance was observed between the special assistance units and the criminal investigation and intelligence services. The Dutch government decided to follow up most aspects of the recommendations, but did not give the green light for a full centralized structure.¹⁹

An interim (temporary) structure was set up to provide in a multidisciplinary special assistance unit (BBE-Snelle Interventie Eenheid, BBE-SIE), which prepared the ground for a single integrated special assistance unit, capable of rapid intervention in all events of serious violence and/or terrorism. The new unit, inaugurated on 1 July 2006, comprises military personnel and police officers, and is capable of flexible downsizing or upsizing. The unit is part of the Special Interventions Service (Dienst Speciale Interventies, DSI), which resides under the management of the KLPD (national police service). The seven arrest and support services (Aanhoudings-en Ondersteuningseenheden, AOE's) were reduced to six (three units in the three largest police forces of Amsterdam, Rotterdam and the Hague, as well as one in the middle, one in the south, and one in the north of the country). In serious cases, the AOE's are commanded by the DSI. The activities of the DSI are subject to the authority of the President of the College of Prosecutors General of the Public Prosecution Service, who carries a mandate on behalf of the Minister of Justice.

Legislative response

The Dutch Rule of Law (*Rechtsstaat*) flexed its muscles against terrorism in an unprecedented manner. The director of the AIVD observed that many of the legal principles that were codified in the 1990s in response to the aberrations with undercover policing methods were now outdated (Van Hulst 2005, 5). Serious debates followed between human rights activists, pragmatists and hard-liners, even within the (now former) coalition government, which accommodated Christian-democrats, right-wing liberals and left-wing liberals.

The most significant legal response to the new threat of terrorism is the Law on Terrorist Crimes (*Wet Terroristische Misdrijven*), the consequence of the (binding) implementation of the EU Framework Decision, which entered into force on 23 June 2002.²⁰ The new law has been inserted as a separate category of crimes in the criminal law, and entered into force on 10 August 2004.²¹ Terrorism had hitherto not been defined in Dutch legislation, which meant that no one could be sentenced for membership of a terrorist organization or for carrying out terrorist attacks.

¹⁹ 'Brief van de Minister van Justitie [Letter from the Minister of Justice]', TK 2004–2005, 29 754, number 23, 3 June 2005.

²⁰ Official Journal of the European Communities, L 164/3, 22 June 2002.

²¹ *Staatsblad* 393, 29 July 2004.

Persons suspected of such actions could be prosecuted for criminal activities normally performed by terrorists, such as kidnapping, trespassing, manslaughter or murder. Article 140 of the Dutch Criminal Code already made it possible to define membership of a criminal organization as a criminal offence. The new law has defined preparatory activities as well as conspiracy. Moreover, the new law has effectively criminalized recruitment for the violent jihad and has raised maximum sentences for criminal activities such as manslaughter, serious maltreatment, abduction and hostage-taking, if they are committed with a terrorist intention. When the crime is punishable with a sentence of maximum of 15 years (such as manslaughter), the prison sentence can be raised to life or maximum of 20 years. The maximum penalty for recruitment for the violent jihad has been raised from one to four years. Conspiracy is now separately punishable, which facilitates law enforcement operations against terrorist groups or networks that operate in a loose or linked cooperative framework.

These recent measures have enabled the Public Prosecution Service to use criminal procedural powers and to intervene at an early stage. In turn, this is meant to facilitate international cooperation between law enforcement services, including mutual legal assistance. In order to prove conspiracy, there has to be evidence that two or more persons have been conspiring to commit a serious terrorist offence. The Dutch Criminal Procedure Code provides that a criminal case has to be dealt with by a court 106 days after the demand for custody, and demands that all dossiers relating to the proceedings are accessible. The government argued that in terrorist cases, this legal period may be too short and that the rule of access may jeopardize the intelligence-gathering process. As a consequence, the (now former) government has sought to amend the law in such a way that in the event of terrorist cases, the trial dossier is 'to be held incomplete' for a longer period of time. Two legislative proposals have not yet been endorsed by parliament, namely the bill that proposes to amend the Dutch Criminal Procedure Code for protected witnesses (and for the use of material of the intelligence services for the purpose of criminal court proceedings), and the bill that proposes to expand extraordinary and proactive powers for police and law enforcement agencies.²²

In the meantime, the Public Prosecution Service has stepped up its proceedings against various suspects of terrorism. In January 2006, prison sentences of up to 20 years were demanded for some members of the 'Hofstad' group in the so-called 'Piranha' process, some of whom were held responsible for the attempted murder of police officers.²³ Jason W and Ismail A were convicted on the basis of the new law on terrorist offences and received prison sentences of 15 years and 13 years, respectively. Mohamed Bouyeri, who did not receive a

²² 'Wetsvoorstel tot Wijziging van het Wetboek van Strafvordering, het Wetboek van Strafrecht en enige andere wetten ter verruiming van de mogelijkheden tot opsporing en vervolging van terroristische misdrijven [Bill to Amend the Criminal Procedure Code, the Criminal Code, and some other laws for the extension of possibilities to investigate and prosecute terrorist crimes]', TK 2004–2005, 30 164, number 2; 'Wetsvoorstel tot wijziging van het Wetboek van Strafvordering in verband met het treffen van een regeling voor afgeschermd getuigen en enkele andere onderwerpen [Bill to Amend the Criminal Procedure Code in relation to the establishment of an arrangement for protected witnesses and some other subjects]', TK 2003–2004, 29 743, number 2.

²³ < http://www.om.nl/terrorisme/_terrorisme_nieuwsberichten/25742/ > .

sentence because he is already serving a life-long imprisonment for the murder of Theo van Gogh, was convicted for membership of a terrorist organization. The judge even regarded him as the leader of the Hofstad Group. The Public Prosecution Service lodged an appeal to the High Court against the acquittal of Samir A, who had been suspected of preparing a large-scale terrorist attack. They won the appeal and the case has been referred back to the original court.

Additional legal measures include a change of the Law on Weapons and Ammunition (*Wet Wapens en Munitie*) and the introduction of preventive searches (*preventief fouilleren*). In the event of concrete indications, the law on weapons and ammunition makes it possible to open packages, stop and search vehicles, as well as frisk individuals. This new measure has been introduced on top of the competence of local authorities to stage preventive searches on individuals. Proactive law enforcement competences (telephone tapping, infiltration, systematic surveillance) have been widened to investigations where there may not (yet) be the indication of a concrete punishable crime. The performance of those competences is now possible in relation to the conspiracy of or active execution of terrorist acts. Most terrorist suspects are apprehended and detained on the basis of light criminal offences. Normally, imprisonment has to end when the investigating judge (*rechter commissaris*) does not extend the custody, such as in cases where the investigations do not result in new or hard evidence (*eis van ernstige bezwaren*).

In June 2005, the then government approved a legislative proposal that allows the limitation of rights for suspects of terrorism.²⁴ Someone suspected of a terrorist crime can be subject to limitations for a period of up to two years. This may relate to prohibitions to enter certain zones and a notification duty at a police station. These are administrative measures that may be used as part of the wider anti-terrorism package. People who are subject to these measures, which can be extended every three months, may appeal against them by registering a complaint with either the Ministry of the Interior or the Council of State. The legislative proposal also provides for a measure whereby subsidies or licenses may be withdrawn or suspended.

Further legal measures will widen the possibility for the Prosecution Service to acquire identification data from nongovernmental organizations.²⁵ Until now, this had not been possible as a result of data-protection requirements. Article 9, 1 Data Protection Law (*Wet Bescherming Persoonsgegevens*) can be waived by a Public Prosecutor in the interest of the acquisition of orienteering information concerning terrorist crimes when it concerns public registers or databases. The 2001

²⁴ 'Regels inzake het opleggen van beperkende maatregelen aan personen met het oog op de bescherming van de nationale veiligheid en inzake het weigeren of intrekken van beschikkingen met het oog op de bescherming van de nationale veiligheid [Rules concerning the imposition of limiting measures to persons with a view to protect the national security and concerning the refusal or withdrawal of orders with a view to protecting national security], *Wet bestuurlijke maatregelen nationale veiligheid* [Law administrative measures national security]', TK 2005–2006, 30 566, number 2.

²⁵ 'Goedkeuring van het op 24 april 1986 te Straatsburg totstandgekomen Europees Verdrag inzake de erkenning van de rechtspersoonlijkheid van internationale niet-gouvernementele organisaties [Approval of the European Treaty signed on 24 April 1986 on the recognition of the legal personality of international nongovernmental organizations]', TK 2002–2003, 27 764, number 2.

Government Action Plan against Terrorism also focused on legislation concerning the monitoring of financial transactions and the investigation of irregular (*ongebruikelijke*) transactions. The laws on the notification of irregular transactions (*Melding Ongebruikelijke Transacties*) and on sanctions (*sanctiewet*), as well as identification procedures in relation to financial services, were to be improved. Freelance practitioners of law and financial services (private accountants and insurance brokers, for example) and trust offices (*trust-kantoren*), entities other than banks to which individuals and organizations entrust their wealth, are now subject to compulsory notification and increased scrutiny. The Civil Law Code makes it possible for the Public Prosecution Service to use administrative competences for the investigation and sanctioning of foundations (for example, charity organizations) suspected of supporting terrorist organizations. To this end, there will be close cooperation with the Financial Expertise Centre.

Finally, the Government Action Plan called for fast ratification of extradition treaties and the amended EU Directive on Money Laundering. The ratification of the UN conventions against financing of terrorism and 'bomb'-terrorism was encouraged and under discussion in the national parliament. The Netherlands made an effort to ratify the EU Mutual Legal Assistance Convention by the end of 2002, which would facilitate the creation of Joint Investigation Teams. The government also stressed the need for a rapid ratification of the Crime in Cyberspace Convention.

Synthesis: The Dutch response from a comparative perspective

At first blush, the Dutch response to 9/11 stands out to some extent when compared to the responses of the other EU member states. From the available data, France, Germany, Italy, the Netherlands, Spain and the UK have all followed their own internal rhythm, path and logic, based on their history with terrorism (Van de Linde et al 2002, 4). In general, national responses to 9/11 can be considered as cumulative to previous counterterrorism policies. Furthermore, the European countries seemed to have had different opinions about the speed of, and need for, legislative and organizational reform. This differentiated pattern resembles the response of individual EU member states to international organized crime (den Boer, 2002). Table 1 presents an overview of the policy, institutional and legislative responses to terrorism in the mentioned countries. This facilitates a more systematic comparison with the counterterrorism strategy assumed in the Netherlands.

When one compares these national responses to terrorism, a few observations can be made. The first general observation is that while in some EU member states the catastrophic attacks in the US provided a political window of opportunity for drafting and adopting new anti-terrorism legislation, in some others these attacks did not seem to have the same transformative impact on the legislation, policy or institutional architecture. The second observation is that though the UK and Spain have had similar experiences with the persistence of domestic terrorism, they demonstrated different responses to participation opportunities within the EU and to the establishment of new domestic anti-terrorism legislation. A third observation is that all countries included in this comparison have responded to terrorism with a firm institutional move toward centralized coordination of

Table 1. A comparison of national responses to terrorism in Europe

COUNTRY	FRANCE	GERMANY	ITALY	NETHERLANDS	SPAIN	UNITED KINGDOM
HISTORY	Separatist Corsicans, <i>Cellules Combattantes</i> (CCC), <i>Action Directe</i> and the Armed Islamic Group (GIA); cross-border campaign of <i>Euskadi Ta Askatasuna</i> (ETA) (Cettina 2003, 87).	<i>Rote Armee Fraktion</i> (RAF); extreme right and 'imported terrorism' incidents (<i>Partiya Karkerên Kurdistan</i> , PKK, Palestinians 1972); post-9/11 focus on transnational, religiously inspired terrorism.	<i>Brigate Rosse</i> (Red Brigades) and right-wing extremist groups.	Moluccan train hijackings; instances of imported terrorism, for example, <i>Irish Republican Army</i> (IRA), ETA and French Embassy hostage crisis; murder of Theo van Gogh 2 November 2004 by Muslim fundamentalist.	<i>Euskadi Ta Askatasuna</i> (ETA); Madrid railway bomb attacks by radical jihadists on 11 March 2004, killing 189 and injuring 1,460 people.	<i>Irish Republican Army</i> (IRA); jihadist bombing of Pan Am flight over Lockerbie, Scotland, 1988; London underground bombings by jihadists, 7 July 2005; several scares and arrests.
POLICY	Pre-9/11: pragmatic policy; Vigipirate Plan 1991. Focus on law enforcement response. Special anti-terror magistrate. Post-9/11: revision of Vigipirate Plan, with crisis and disaster management plan in response to loss of life during heatwave.	Pre-9/11: specific policies such as introduction, in 1972, of scrutiny procedure for civil servants, and frequent usage of profiling. Post-9/11: improved immigration control and international cooperation, destruction of terrorist organizations, critical infrastructure protection. Measures to integrate 36 different counterterrorism agencies. Creation of the Federal Office for Civil Protection and Disaster Response (<i>Bundesamt für Bevölkerungsschutz und Katastrophenhilfe</i> , BBK) and <i>Gemeinsamen Terrorismus Abwehrzentrum</i> (GTAZ), which coordinates all agencies involved in the fight against terrorism, and a national archive of personal data.	Pre-9/11: first repression, then prevention and international cooperation. Post-9/11: increased surveillance of potential strategic targets (water, electric systems, chemical industry); further development of a national emergency plan.	Pre-9/11: no explicit policy, except intelligence-gathering by Intelligence Service, mainly on 'imported terrorism'. Post-9/11: vast programme of measures (see main text).	Pre-9/11: repressive policy; arrest of ETA terrorists on French soil; permanent monitoring police, <i>guardia civil</i> , and private security. Intensified activity against Islamic terrorists; more proactive intervention. Post-Madrid: improvement of intelligence exchange and integration of minority groups.	Pre-9/11: policy primarily focused on the IRA; aviation security measures after 'Lockerbie'. Post-9/11: creation in 2002 of a Security and Intelligence Coordinator within Cabinet Office; Home Office Five Year Strategic Plan 2004–2008 (Cross-Departmental Counter Terrorism Strategy called CONTEST); Civil Contingencies Act 2004; single national framework for regional and local responses to crises and large-scale calamities; increased budget for intelligence-gathering and emergency planning.

Continued

COUNTRY	FRANCE	GERMANY	ITALY	NETHERLANDS	SPAIN	UNITED KINGDOM
INSTITUTION	<p>Pre-9/11: close cooperation between police, gendarmes and the army; local surveillance at vulnerable points; international cooperation.</p> <p>Post-9/11: creation of the Council of Internal Security (<i>Le Conseil de sécurité intérieure</i>, CSI) and reforms in intelligence services.</p>	<p>Pre-9/11: coexistence of intelligence services: Federal Intelligence Service (<i>Bundesnachrichtendienst</i>, BND), Federal Bureau for the Protection of the Constitution (BfV), and Military Counterintelligence Service (MAD).</p> <p>Post-9/11: some level of centralization from establishment of the Joint Coordination Centre for the intelligence services in Berlin in July 2004 under the Federal Ministry of the Interior. Modifications, for example, improved cooperation between police and secret services, interception mandate widened, data-mining of immigration databases. After London bombing of July 2005, extension of (proactive) competences for German Federal Police Agency (<i>Bundeskriminalamt</i>, BKA), which had already obtained mandate to conduct its own anti-terrorism investigations after 9/11. Creation of GTAZ and BBK in 2004.</p>	<p>Pre-9/11: centralized anti-terrorism unit within the Ministry of the Interior, with multiagency cooperation; inter-ministerial bodies such as the Public Order and Security Committee and Inter-Ministerial Committee for Intelligence and Security (CIIS); protection of the financial system against terrorism; special police and prosecutors dealing with terrorism. Military Intelligence and Security Service (SISMI) and Democratic Intelligence and Security Service (SISDE) coordinated by Executive Committee for the Intelligence and Security Services (CESIS).</p> <p>Post-9/11: no substantial institutional changes.</p>	<p>Pre-9/11: terrorism not priority; Internal Security Service (<i>Binnenlandse Veiligheidsdienst</i>, BVD) forerunner of the General Intelligence and Security Service (<i>Algemene Inlichtingen- en Veiligheidsdienst</i>, AIV) responsible for counterterrorism in cooperation with the Regional Intelligence Centres (<i>Regionale Inlichtingen Diensten</i>, RIDs).</p> <p>Post-9/11: creation of anti-terrorism coordinator and comprehensive anti-terrorism action plan, as well as reforms of special assistance forces (see main text).</p>	<p>Pre-9/11: joint Command Centre at Director General level, specialist units.</p> <p>Post-Madrid: Government Committee for Crisis Situations and National Centre for Anti-terrorism Coordination (CNCA), consisting of police, Guardia Civil and National Intelligence Centre (CNI).</p>	<p>Pre-9/11: activity of three main intelligence services MI5, MI6 and GCHQ (Government Communications Headquarters), complemented by a National Coordinator for Terrorist Investigations.</p> <p>Post-9/11: creation of the Joint Terrorism Analysis Centre (JTAC) in 2003. Cooperation of agencies in Serious Organised Crime Agency (SOCA).</p>

Continued

COUNTRY	FRANCE	GERMANY	ITALY	NETHERLANDS	SPAIN	UNITED KINGDOM
LEGISLATION	<p>Pre-9/11: 1986 definition of terrorism; introduction of centralist and specialist elements in anti-terrorism trial procedures; special investigatory magistrates. Cooperation between secret services and criminal investigation agencies. In 1996, new law created specific and separate terrorist charge (conspiracy), with proactive element for investigation of terrorist offences.</p> <p>Post-9/11: anti-terrorist provisions to strengthen competences of police services (15 November 2001).</p>	<p>Pre-9/11: elaborate anti-terrorism legislation in response to RAF.</p> <p>Post-9/11: definition of terrorist offences in paragraphs 129a and b of Criminal Code based on EU Framework Decision. Article 129a refers to a general definition of terrorism, including recruitment, training, preparatory acts and financing. Article 129b lists the articles concerning the membership of a terrorist organization (murder, genocide or other offences aimed against the freedom of individuals or the public).</p>	<p>Pre-9/11: judicial category of <i>Pentiti</i> (repentant terrorists or criminals). 1980 introduction of terrorist offence into Article 270bis of the criminal code.</p> <p>Post-9/11: 2001 amendment to monitor violence by international organizations. Explicit definition of terrorism on 31 July 2005, comprising elements of EU <i>Framework Decision on combating terrorism</i>.</p>	<p>Pre-9/11: no penalization of terrorist offence.</p> <p>Post-9/11: 10 August 2004 entry into force of new anti-terrorism legislation, penalizing participation and conspiracy. Several legislative proposals, for example, widening of powers of prosecution (see main text).</p>	<p>Pre-9/11: 1977 creation of special court in Madrid for terrorism and organized crime. 1978 constitutional law addressing terrorist crimes. 2001 Penal Code that includes new provisions (Reinares 2003, 64f).</p> <p>Post-9/11: special law in 2003 for prevention and freezing of terrorist goods. Domestic anti-terrorism laws were compared with EU <i>Framework Decision on combating terrorism</i>, without additional legislation deemed necessary.</p>	<p>Pre-9/11: prevention of Terrorism Act (1974–1989) providing special police competences, outlawing of paramilitary organizations and creation of Diplock courts (no jury). Terrorism Act (TACT) provisions (2000) increasing focus on international terrorism, strengthening stop and search competences, and strengthening arrest powers.</p> <p>Post-9/11: Anti-terrorism, Crime and Security Act 2001 (ATCSA), streamlining immigration procedures, infrastructure security and extension of police competencies. Detaining foreign suspects of terrorism without concrete suspicion.</p>

(Neve et al, 2006; Archik et al 2006; German Embassy 2005)

anti-terrorism policies, intelligence-gathering and crisis management responses. A fourth observation is that in most of the selected EU member states it is noticeable that more energy was invested in multiagency or multidisciplinary cooperation. Finally, these responses have been complemented by a light form of legal harmonization, which has been achieved particularly through the EU *Framework decision on combating terrorism* and the *Framework decision on the European arrest warrant*.²⁶ The latter instrument has had a harmonizing effect on the extradition regime in the EU, which applies to 32 different criminal offences, of which terrorism is just one category (den Boer 2006, 93). EU anti-terrorism policies have had a strong influence on those domestic criminal justice systems that did not yet have their own anti-terrorism legislation (such as the criminal justice system of the Netherlands). The implementation of EU measures, such as the (binding) European Arrest Warrant (Blekxtoon 2004), is a matter of domestic politics and is thus subject to variation between and within the member states. In the UK, for instance, the Anti-terrorism, Crime and Security Act 2001 facilitates rapid implementation of the Council *Framework decision on combating terrorism*, but the *European arrest warrant* is to be implemented under primary legislation and not under the 2001 Act (Walker 2003, 24).

Conclusion

The Dutch case study shows that the Netherlands has woken up to the threat of terrorism and radicalization, and has responded to this new threat with a substantial series of measures. It is hard to explain this sudden activity in light of the virtual absence of anti-terrorism measures prior to 9/11. An explanatory factor may be that the Netherlands had a centre-right government that embraced these measures in an attempt to assert its central authority over law enforcement activity, and which sought to tackle radicalization by further labelling, isolating and repressing. It may also be argued that most of the anti-terrorism measures have ultimately been used for wider surveillance and intervention purposes, rather than for the mere prevention of terrorism.

However, even under the now former centre-right government, a subtle but significant shift has been noticeable: initially, there was a strong reliance on repressive criminal law measures. The (cautious) pro-integration debate is of a more recent date, as repressive strategies are deemed to have had an adverse effect on the ability of communities to interact and participate, and have tended to further alienate the position of law enforcement agencies from society (Tagmount 2006). With the relatively one-sided choice for repression, and selective and proactive investigation, the Netherlands seems to have abandoned its traditional culture of trust, familiarity and tolerance. However in February 2007, the new government announced a coalition agreement with a more prointegrative tone. Due to the new composition of parliament, there may even be insufficient endorsement of formerly tabled anti-terrorism bills.

Meanwhile, the counterterrorism strategy of the Netherlands has resulted in a considerable widening of the Rule of Law. A number of authors have expressed their concern that these rapid and cumulative institutional and legal interventions

²⁶ Official Journal of the European Communities, L 190, 18 July 2002.

have transformed the Netherlands into a full-fledged surveillance society (Jansen and Janssen 2006) with a set of weakly counterbalanced rules and competences that might be uncontrollable if in the 'wrong' hands (Van Gunsteren 2004). The democratic paradox has thus presented itself as a concise but hard dilemma: how to stay within the limits of the democratic legal order whilst curbing activities that potentially undermine democracy? Several international treaties provide national authorities with the possibility to expand their competencies. Whether these measures can be considered as truly effective means against violent radicalization and terrorism remains to be clarified in future practice and research.

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